



WESTFIELD-WASHINGTON TOWNSHIP  
BOARD OF ZONING APPEALS

May 1, 2021  
Exhibit 1

**Petition Number:** 2105-VS-14

**Subject Site Address:** NWC of 175<sup>th</sup> Street and Wheeler Road (the "Property")

**Petitioner:** City of Westfield (the "Petitioner")

**Request:** The petitioner is requesting a Variance of Standard to permit an Electronic Sign in the Right-of-Way of the Monon Trail at the SR 32 Trailhead (Article 6.17).

**Current Zoning:** Right-of-way

**Current Land Use:** Recreational

**Approximate Acreage:** 1.8 acres +/-

**Exhibits:**

1. Staff Report
2. Location Map
3. Proposed Kiosk Location
4. Proposed Kiosk Design
5. Application

**Staff Reviewer:** Pam Howard, Senior Planner

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## **OVERVIEW**

**Location:** The subject property is 1.8 acres +/- in size and located at the Greyhound Pass Trailhead at the Monon Trail (see **Exhibit 2**). The Property is located within the Right-of-Way<sup>1</sup> of the Monon Trail, and currently contains benches for trail users. All directly adjacent property is commercial in use. Adjacent zoning districts include: Hall & House PUD to the east and south, The Trail PUD to the south, Monon Crossing PUD to the west, Wheeler landing PUD and GB: General Business to the north.

**Variance Request:** The petitioner is requesting a Variance of Standard to permit an Electronic Sign<sup>2</sup> in the Right-of-Way of the Monon Trail at the SR 32 Trailhead, as generally illustrated on the Proposed Kiosk Location Exhibit (see **Exhibit 3**) and Proposed Kiosk Design Exhibit (see **Exhibit 4**).

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<sup>1</sup> Chapter 12 of the UDO defines "Right-of-way" as "[a]n area of land not on a Lot for public or private use to accommodate a transportation system and necessary public utility infrastructure (including but not limited to water lines, sewer lines, power lines, and gas lines) that is dedicated or deeded to a governmental entity and under the control of a public agency for public use."

<sup>2</sup> Chapter 12 of the UDO defines "Sign, Electronic" as "[a] Sign or Sign component with a fixed or changeable display composed of a series of lights, including but not limited to light emitting diode (LED), that may be changed through electronic means."

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## **SUMMARY OF VARIANCE**

The Petitioner is requesting this variance to permit an Electronic Sign, in the form of a Kiosk, in the Right-of-Way of the Monon Trail at the SR 32 Trailhead, as generally described in the statement of intent (see **Exhibit 5**), and illustrated on the Proposed Kiosk Location Exhibit (see **Exhibit 3**) and Proposed Kiosk Design Exhibit (see **Exhibit 4**). The UDO<sup>3</sup> prohibits Signs<sup>4</sup> in the Right-of-Way. Further, the Sign Standards do not contemplate this type of signage and therefore no standards are included for regulation. For this reason, the petitioner is asking that Article 6.17 Sign Standards, of the UDO, not apply.

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## **COMPREHENSIVE PLAN**

The Westfield-Washington Township Comprehensive Plan identifies this property within the “Suburban Residential” land use classification. Additionally, the Monon Trail is included as a named trail on the Alternate Transportation Plan included in the Thoroughfare Plan.

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## **PROCEDURAL**

**Public Notice:** The Board of Zoning Appeals is required to hold a public hearing on its consideration of a Variance of Development Standard. This petition is scheduled to receive its public hearing at the May 11, 2021, Board of Zoning Appeals meeting. Notice of the public hearing was properly advertised in accordance with Indiana law and the Board of Zoning Appeals’ Rules of Procedure.

**Conditions:** The UDO<sup>5</sup> and Indiana law provide that the Board of Zoning Appeals may impose reasonable conditions and limitations concerning use, construction, character, location, landscaping, screening, and other matters relating to the purposes and objectives of the UDO upon any Lot benefited by a variance as may be necessary or appropriate to prevent or minimize adverse effects upon other property and improvements in the vicinity of the subject Lot or upon public facilities and services. Such conditions shall be expressly set forth in the order granting the variance.

**Acknowledgement of Variance:** If the Board of Zoning Appeals approves this petition, then the UDO<sup>6</sup> requires that the approval of the variance shall be memorialized in an acknowledgement of variance instrument prepared by the Department. The acknowledgement shall: (i) specify the granted variance and any commitments made or conditions imposed in granting of the variance; (ii) be signed by the Director, Property Owner and Applicant (if Applicant is different than Property Owner); and (iii) be recorded against the subject property in the Office of the Recorder of Hamilton County, Indiana. A copy of the recorded acknowledgement shall be provided to the

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<sup>3</sup> Article 6.17(E) Sign Standards; Prohibitions

<sup>4</sup> Chapter 12 of the UDO defines “Sign” as “[a]ny display or device placed on a property in any fashion which is designed, intended, or used to convey any identification, message or information other than an address number.”

<sup>5</sup> Article 10.14(I) Processes and Permits; Variances; Conditions of the UDO.

<sup>6</sup> Article 10.14(K) Processes and Permits; Variances; Acknowledgement of Variance of the UDO.

Department prior to the issuance of any subsequent permit or commencement of uses pursuant to the granted variance.

Variances of Development Standard: The Board of Zoning Appeals shall approve or deny variances from the development standards (such as height, bulk, or area) of the underlying zoning ordinance. A variance may be approved under Indiana Code § 36-7-4-918.5 only upon a determination in writing that:

1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community;
2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner; and
3. The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the subject property.

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#### **DEPARTMENT COMMENTS**

**Approval:** If the Board is inclined to approve the variance, then the Department recommends the following findings:

**Recommended Findings for Approval:**

1. **The approval will not be injurious to the public health, safety, morals, and general welfare of the community:**

**Finding:** It is unlikely that approving the requested variance(s) would be injurious to the public health, safety, morals, and general welfare of the community. The purpose of the kiosk is to provide security monitoring and information services to the trail users.

2. **The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner:**

**Finding:** It is unlikely the use and value of adjacent property will be affected in a substantially adverse manner. The proposed variance should not have a negative impact on surrounding properties because: (i) the proposed kiosk will be placed on City right-of-way and not personal property; (ii) the proposed kiosk is intended to improve the safety of the trail; and (iii) the approval of the variance will allow for the continued use and improvement of the property in a manner substantially consistent with the quality and character of the surrounding area and Comprehensive Plan.

3. **The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the subject property.**

**Finding:** Strict adherence to the zoning ordinance would result in the inability to improve the property, as proposed, in accordance with the Unified Development Ordinance.

**Denial:** If the Board is inclined to deny the requested variance, then the Department recommends denying the variance, and then tabling the adoption of findings until the Board's

next meeting with direction to the Department to prepare the findings pursuant to the public hearing evidence and Board discussion.